IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

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WRIT PETITION NO : 12166 of 2004

Between:

1 K.Mallikarjuna, S/o Mallaiah,
R/o H.No.4/446, Ramachandra Nagar, Mantralayam,

Kurnool District
2 B.Ramudu, S/o Nallanna,
R/o Old Town, Mantralayam, Kurnool District
3 K.Lakshmi, W/o Mallikarjuna,
H.No.4/446, Ramachandra Nagar, Mantralayam, Kurnool District
4 K.Padma, W/o Chinna Lakshmappa,
R/o Old Town, Mantralayam, Kurnool District

.... PETITIONERS

AND

1 The District Collector (Panchayat Wing), Kurnool, Kurnool District
2 The Panchayat Secretary, Mantralayam Gram Panchayat,
Mantralayam, Kurnool District.
3 D.C.Timmappa, Upa Sarpanch, S/o Chinna Timmaiah,
Mantralayam Gram Panchayat, Mantralayam, Kurnool District

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to and in connection with the order passed by the 1st respondent in Roc.No.4158/Pts.A1/2003, dated 6-7-2004, and

quash the same as illegal, arbitrary and without jurisdiction.

Counsel for the Petitioners : MR.N.SIVA REDDY

Counsel for the Respondent Nos.1 & 2 : GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT.

Counsel for the Respondent No.3 : None appeared.

The Court made the following :

ORDER:

The petitioners challenge the proceedings dated 6-7-2004 issued by the 1st respondent disqualifying them to hold the post of ward members of Mantralayam Gram Panchayat, Kunool District.

The petitioners are the ward members of Mantralayam Gram Panchayat. On the complaint of the Upa-Sarpanch – 3rd respondent with regard to their having more than two children and on an enquiry conducted by the Divisional Panchayat Officer, Adoni, the 1st respondent passed the impugned order disqualifying the petitioners to hold the post of ward members under Section 19(3) of the Andhra Pradesh Panchayat Raj Act, 1994 (in short 'the Act').

The case of the petitioners is that they have received the show cause notice dated 15-6-2004 on 24-6-2004 and requested 1st respondent to furnish a copy of the report of the Divisional Panchayat Officer and sought for 15 days time to submit their explanation to the show cause notice, but the 1st respondent passed the impugned order without considering their request which is against the principles of natural justice and therefore the same is liable to be set aside.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj.

It is submitted by the learned counsel for the petitioner that as held by a Division Bench of this court in **CHAVA ROSAIAH v. CHINTALA VENKATESWARLU AND ANOTHER**, as per Section 22 of the Act, which postulates that pending adjudication of allegations, a member shall be entitled to act as if he is qualified or were not

disqualified, the allegations for disqualifications of a member or Sarpanch have to be adjudicated by a competent court i.e, District Court before disqualifying them under Section 19 of the Act and admittedly as there was no adjudication on the allegations against the petitioners in the present case, the impugned proceedings is liable to be side. The relevant portion of the judgment reads:

Unless there is a decision on the allegations so made against a member or Sarpanch by an adjudicatory authority, which in this case is District Judge, such allegations cannot be used against t hem ember or Sarpanch and he would continue to hold the office as member or Sarpanch unless removed in accordance with law.

The said proposition of law has not been controverted by the learned Government Pleader for Panchayar Raj.

Admittedly, in the present case there is no adjudication on the allegations made against the petitioners by the competent court, before passing the impugned order under Section 19 of the Act, which is contrary to the Section 22 of the Act and the Judgment of this court referred supra.

Therefore, the writ petition is allowed and the impugned order is set aside. However, the respondents are not precluded from taking necessary action after following the procedure laid down in Section 22 of the Act.

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15-7-2004

gs/asp

To

1. The District Collector (Panchayat Wing), Kurnool, Kurnool District
2 The Panchayat Secretary, Mantralayam Gram Panchayat, Mantralayam, Kurnool District

3. 2CCs to G.P. for Panchayath Raj and Rural Development, High

Court of A.P., Hyderabad (OUT)

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